

STATEMENT OF THE CASE

Robert L. Clemons (“Clemons”) brings this *pro se* appeal from the trial court’s grant of the State’s motion to correct error.

We dismiss.

ISSUE

Whether the trial court lacked subject matter jurisdiction over Clemons’ claim.

FACTS

On March 3, 1999, pursuant to a plea agreement, Clemons was found guilty of child molesting, as a class B felony. On March 10, 1999, the trial court sentenced Clemons to the Indiana Department of Correction (DOC) for twenty years.

On November 28, 2005, Clemons received a high school diploma from Continental Academy. He filed a petition for educational credit time¹ on March 15, 2006. On May 5, 2006, the trial court granted Clemons’ request, awarding him a one-year credit. Subsequently, on May 30, 2006, the State filed a motion to correct error and a memorandum of law asking that the one-year credit be set aside because “there is no proof that [Continental Academy] has a program that meets Indiana’s standards, as is required by statute.” (Clemons’ App. 16).

John Nally, Education Director for the DOC, filed a declaration in which he asserted, subject to the pains and penalties of perjury, that

there is no showing that Continental Academy requires a final examination equivalent to Indiana’s test prior to awarding high school diplomas, as

¹ Indiana Code § 35-50-6-3.3.

required in Indiana by the ISTEP+ (Indiana Statewide Testing for Educational Progress), formerly known as the GQE (“Graduation Qualifying Exam”).

(Clemons’ App. 25). On September 12, 2006, citing the aforementioned clause of Nally’s declaration, the trial court entered a nunc pro tunc order granting the State’s motion to correct error, and set aside its earlier award. Clemons now appeals.

DECISION

In response to Clemons’ argument that the trial court erred when it set aside its award of educational credit time, the State contends that Clemons’ appeal should be dismissed for lack of subject matter jurisdiction. Subject matter jurisdiction refers to a court’s power to hear and decide a certain class of cases. *State v. Foy*, 862 N.E.2d 1219, 1223 (Ind. Ct. App. 2007). It concerns whether the claim involved falls within the general scope of authority conferred upon the court by the Indiana Constitution or by statute. *Rhines v. Norlarco Credit Union*, 847 N.E.2d 233, 237 (Ind. Ct. App. 2006).

In *Members v. State*, 851 N.E.2d 979, 982 (Ind. Ct. App. 2006), Members challenged the trial court’s denial of educational credit time after he received a high school diploma from Continental Academy. Members, like Clemons, did not challenge his conviction or the appropriateness of his sentence, but rather, claimed that he was improperly denied educational credit time. A panel of this court ruled that

[w]hile the trial court determines the initial credit time when an offender is sentenced, modification to that credit time -- which includes modification because of educational credit -- is the responsibility of the DOC. *See Robinson v. State*, 805 N.E.2d 783, 791 (Ind. 2004); *see also Samuels [v. State]*, 849 N.E.2d 689, 692 (Ind. Ct. App. 2006)]; *and Sander v. State*, 816 N.E.2d 75, 78 (Ind. Ct. App. 2004) (holding that application for educational credit time must be made to, and the initial ruling thereon

made by, the DOC when the educational achievement was accomplished after sentencing . . .).

851 N.E.2d at 982-83. The panel noted further that in the event that the DOC denied Members' request for educational credit time, Members would then have to submit to the DOC's grievance procedure² before resorting to judicial review.

The facts indicate that Clemons did not seek educational credit time from the DOC before filing his petition with the trial court, and thereby, failed to exhaust his available administrative remedies before resorting to judicial review. In light of our holding in *Members*, we conclude that the trial court lacked subject matter jurisdiction to consider Clemons' claim for educational credit time, and accordingly, we set aside the judgment and dismiss this appeal.

Appeal dismissed.

KIRSCH, J., and MATHIAS, J., concur.

² Indiana Code section 11-11-1-2 delineates the following "minimum requirements" for departmental grievance procedures:

The commissioner shall implement a departmental procedure in which a committed person may submit grievances arising out of the administrative acts of the department that affect that person. Although the procedure should encourage flexibility and informality in the resolution of grievances, it must be consistent with the following minimum requirements:

- (1) A committed person shall be informed of the grievance procedure as part of his orientation.
- (2) The department must periodically communicate to a committed person the rules and policies affecting him.
- (3) The department shall keep the person reasonably informed as to the status and ultimate disposition of his grievance.
- (4) The department may not undertake any act or practice that would discipline a person for, or otherwise discourage or limit him from, utilizing the grievance procedure.